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7                          IN THE UNITED STATES DISTRICT COURT  
8                          FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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10                          ANTHONY DAWAYNE LEE TURNER,        )  
11                          Plaintiff(s),                              )                          No. C 10-5709 CRB (PR)  
12                          v.    )  
13                          TOM GRAFF, et al.,                      )                          ORDER DIRECTING  
14                          Defendant(s).                              )                          PLAINTIFF TO FIND  
    )                          UNSERVED  
    )                          DEFENDANTS  
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16                          On November 18, 2010, while plaintiff was in custody at Atascadero State  
17                          Hospital, he filed a pro se complaint under 42 U.S.C. § 1983 in the United States  
18                          District Court for the Eastern District of California alleging deprivations of his  
19                          constitutional rights while he was at Napa State Hospital (NSH). The Eastern  
20                          District transferred the case to this court.

21                          On May 9, 2011, the court granted plaintiff's request to proceed in forma  
22                          pauperis (IFP) and found that his allegations of use of excessive force state a  
23                          cognizable § 1983 claim for damages against defendants David Brody, Tom  
24                          Graff and Bearer Lee, and directed the clerk to issue summonses, and the United  
25                          States Marshal to serve, these defendants at NSH.<sup>1</sup> But on June 10, 2011, the

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28                          <sup>1</sup>Plaintiff was afforded 30 days from the date of the order (May 9, 2011) to  
                                identify the Doe defendants and amend his complaint to add them, if possible.

1 summonses were returned unexecuted as to each of these defendants because  
 2 none of them could be located and served at NSH, as plaintiff alleged.

3 If service of the summons and complaint is not made upon a defendant in  
 4 120 days after the filing of the complaint, the action must be dismissed without  
 5 prejudice as to that defendant absent a showing of "good cause." Fed. R. Civ. P.  
 6 4(m). Because plaintiff's complaint has been pending for more than 120 days, it  
 7 is subject to dismissal under Rule 4(m). And although a plaintiff who is  
 8 incarcerated and proceeding IFP may rely on service by the Marshal, such  
 9 plaintiff "may not remain silent and do nothing to effectuate such service;" rather,  
 10 "[a]t a minimum, a plaintiff should request service upon the appropriate  
 11 defendant and attempt to remedy any apparent defects of which [he] has  
 12 knowledge." Rochon v. Dawson, 828 F.2d 1107, 1110 (5th Cir. 1987). If the  
 13 Marshal is unable to effectuate service through no fault of his own, for example,  
 14 because plaintiff failed to provide sufficient information or because the defendant  
 15 is not where plaintiff claims, and plaintiff is informed, plaintiff must seek to  
 16 remedy the situation or face dismissal. See Walker v. Sumner, 14 F.3d 1415,  
 17 1421-22 (9th Cir. 1994), overruled on other grounds by Sandin v. Connor, 515  
 18 U.S. 472 (1995). This is especially true where, as here, plaintiff is no longer in  
 19 custody.

20 Because plaintiff has not provided sufficient and/or current information to  
 21 allow the Marshal to locate and serve defendants Brody, Graff or Lee, plaintiff  
 22 must remedy the situation or face dismissal without prejudice of his claims  
 23 against said defendants. See id. Accordingly, plaintiff must provide the court  
 24 and Marshal with sufficient and current information for defendants Brody, Graff  
 25 and Lee such that the Marshal is able to effect service upon them. Failure to do

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27 Because plaintiff failed to do so, the Doe defendants are dismissed.

1 so within 30 days of this order will result in the dismissal without prejudice of the  
2 claims against said defendants.

3 SO ORDERED.

4 DATED: Aug. 24, 2011

  
5 CHARLES R. BREYER  
United States District Judge